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IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 19—

No. 514

BILLIE CHARLINE GUESS, WIFE OF AND ADMINISTRATRIX OF THE ESTATE OF BENJAMIN FRANKLIN WILEY, JR.,

Petitioner,

versus

GEOFFREY STEWART READ.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Billie Charline Guess, petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit in the above entitled case.

OPINIONS BELOW.

No opinion of the District Court in *Guess v. Geoffrey Stewart Read* was written; the opinion of the Fifth

Circuit Court of Appeals in this case (Appendix I, *infra*, pages 19-24) is reported in 290 Fed. (2d) 622 (1961).

JURISDICTION.

The opinion of the Fifth Circuit Court of Appeals in *Billie Charline Guess v. Geoffrey Stewart Read*, No. 18,466, was entered on May 18, 1961, rehearing denied July 25, 1961 (Appendix I, *infra*, page 19). The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254.

QUESTIONS PRESENTED.

(1) When the United States Congress by reference states the law of a federal territory to be the law of the adjacent state, do the venue stipulations in the state's statutes prevent the law from being applied by federal court in the federal territory?

(2) Did the Congress of the United States in enacting the Outer Continental Shelf Lands Act, 43 USCA 1331, *et seq.*, and adopting therein the law of the adjacent state as applicable to the outer continental shelf, intend that the state law would apply only to the sea bed and not to the water covering it and the air over the water, or did the Congress intend that the state law where applicable and not in conflict with the federal law would be applied to the entire outer continental shelf, including the sea bed, the water covering it, and the air above the water?

(3) Is the Louisiana Direct Action Statute available to a litigant in an action arising out of the explora-

tion for oil on the outer continental shelf by virtue of the passage of the Outer Continental Shelf Lands Act providing that the law of the adjacent state extends to the subsoil and sea bed and the fixed structures thereon, the same as if the territory limits of the state were extended to include the outer continental shelf?

STATUTES INVOLVED.

(1) Outer Continental Shelf Lands Act, 43 USCA 1331, *et seq.*

(2) Death on the High Seas Act, 46 USCA 761, *et seq.*

(3) LRS 22:655, Louisiana Direct Action Statute.

STATEMENT.

Petitioner in this case is the widow of Benjamin Franklin Wiley, Jr., and it is his death that gives rise to this cause of action. Petitioner brought this suit in admiralty in the United States District Court for the Eastern District of Louisiana against Underwriters at Lloyds Subscribing the Policies of Liability Insurance Covering the United Aircraft Corporation represented herein by Geoffrey Stewart Read, respondent in this petition, under the Death on the High Seas Act, 46 USCA 761 (Appendix II). Petitioner's intestate, Benjamin Franklin Wiley, Jr., was an employee of Humble Oil & Refining Company, who were engaged in the exploration for oil nine miles southeast of Grand Isle, Louisiana, in the Gulf of Mexico, at latitude 29°6'13" and longitude 89°58'39" west. Petitioner's intestate lost his life dur-

ing the course of his employment when a helicopter in which he was a passenger crashed into the Gulf of Mexico shortly after leaving the drilling barge located at the above-stated position; all of which is more than a marine league from the shore of Louisiana but within the outer continental shelf. The respondents are insurers of United Aircraft Corporation which built and sold the aircraft. In her original libel, petitioner named United Aircraft Corporation as one of the defendants and the only defendant which would be liable for defects in the manufacture or design of the aircraft; that being a theory of the claim. The United Aircraft Corporation was successful in having the suit dismissed as to it for lack of jurisdiction, since it was not present in Louisiana. Thereupon petitioner amended her libel under Louisiana's Act giving direct action privileges against insurers, LRS 22:655 (Appendix III), and named as defendants Underwriters at Lloyds Subscribing the Policies of Insurance Covering United Aircraft Corporation, herein represented by Geoffrey Stewart Read. Read filed a motion to dismiss (Tr. p. 60).

This motion was based on the fact that this accident occurred in the Gulf of Mexico and outside of the territorial limits of the State of Louisiana. The respondent took the position that said Direct Action Statute provided only for suits against insurers in cases where the accident complained of occurred within the borders of the State of Louisiana, and therefore these underwriters could not be sued. An alternative position of the respondent in the Court below was that an insured could not be sued in admiralty on cases brought under the Death on the High Seas Act, 46 USCA 761 (Appendix

III, since there were no specific provisions in that Act for direct actions against insurers.

The petitioner's position was that, for purposes of this suit, the Louisiana Direct Action Statute becomes federal law by virtue of 43 USCA 1331, *et seq.*, otherwise known as the Outer Continental Shelf Lands Act, in Section 1333(a)(2), which provides in part:

> "To the extent that they are applicable and not inconsistent with this act or with other federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent state as of the effective date of this act are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the state if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf."

Petitioners also claimed, regarding actions against underwriters in admiralty, the fact that one is an insurer gives it no special immunity from suits in admiralty and under the Death on the High Seas Act, as long as an underwriter is a legal entity and there is otherwise stated

a cause of action. An action under the Death on the High Seas Act may be brought against any person who might have been sued had death not ensued, 46 USCA 761, and therefore the insurer being a proper defendant had death not ensued is a proper defendant since death did in fact ensue.

On May 11, 1960, the Court granted the respondent's motion and certified an appeal.

On May 18, 1961, the United States Court of Appeals for the Fifth Circuit affirmed the lower Court ruling in an opinion written by Judge Jones (Appendix III).

Petitioner petitioned the United States Court of Appeals for the Fifth Circuit for rehearing and said rehearing was denied on July 25, 1961.

Petitioner respectfully submits that writs to the United States Court of Appeals for the Fifth Circuit should issue in this case.

REASON FOR GRANTING WRIT.

The decision of the Appellate Court so limits the applicability of the portion of the Outer Continental Shelf Lands Act, 43 USCA 133, *et seq.*, wherein same provides for the application of adjacent state laws, that a complex twilight zone has been created. Whether the Direct Action Statute of Louisiana, contributory negligence of Louisiana, criminal laws of Louisiana, property laws of Louisiana, comparative negligence of the General Maritime Law, and crimes on the high seas would be applied in any given case would necessarily be determined by such super-

technical considerations as whether the act was consummated on a platform, in the air above a platform, in the water, on a sea bed under the water, or between the water and a platform or fixed structure between the sea bed and the water over it, and no litigant under any circumstances could with any degree of security predict the consequence of his actions or the appropriateness of the remedy he sought. A definitive statement by this Honorable Court clearly and concisely interpreting this Act and setting out the necessary guideposts for litigants and courts is necessary and desirable to avoid a multitude of litigations as well as to guide prospective litigants in amicable adjustment of differences.

ARGUMENT.

There is no dispute that LRS 22:655, otherwise known as the Direct Action Statute, provides for direct action suits against insurers in cases of personal injury and death so long as same occur within the territorial limits of the State of Louisiana. The primary question in this case is whether the United States can and did extend that law to an accident occurring on the outer Continental Shelf during oil exploration activity as contemplated by the Outer Continental Shelf Lands Act.

Petitioner submits that the Court of Appeals misinterpreted 43 USCA 1331, *et seq.*, and as a result reached a completely contrary result than that clearly expressed therein, and intended to apply in this case. The pertinent section of 43 USCA 1331, *et seq.*, provides:

> "to the extent that they are applicable and not inconsistent with this Act or with other federal

> laws and regulations of the Secretary now in effect or hereinafter adopted."

followed by a clear and unequivocable adoption of adjacent state law, surely indicates that any state law which is not in violation of the quoted portion above is adopted. It seems evident that the Direct Action Statute is applicable for it fills the void by setting out who may be a party to a suit for injuries occurring in this area. Nowhere in the Outer Continental Shelf Lands Act can be found any provision which would cause the Louisiana Direct Action Statute to be inconsistent with the Outer Continental Shelf Lands Act, and no other federal laws or regulations of the Secretary contained provisions which would reveal any such inconsistency. As to the langauge "regulations hereinafter adopted," an inconsistency may possibly exist in the future but surely until said inconsistency presents itself, the Louisiana Direct Action Statute should apply to the area embraced by the Outer Continental Shelf Lands Act.

The Appellate Court takes the position that the Louisiana Direct Action Statute contains venue requirements that it apply only to those accidents occurring within a Parish in Louisiana and that the area embraced by the Outer Continental Shelf Lands Act is not within a Parish of Louisiana and thus the venue requirement of the Act can not be satisfied. It seems obvious that the reason that the Louisiana Direct Action Statute, passed in 1932, contains said venue requirement is to keep same a valid exercise of Louisiana authority having no extra territorial effect. This basic thought can be said to apply to the vast majority of Louisiana laws. Louisiana laws

were intended to protect people in Louisiana, to cover accidents in Louisiana, to be applied in Louisiana. Were it not for the Outer Continental Shelf Lands Act, no one would claim the applicability of Louisiana law beyond its established coast line. When, however, the federal government steps in and expressly adopts Louisiana law, it is in effect saying that Louisiana law obviously intended only to apply in Louisiana and applicable, before adoption, only within Louisiana's territorial limits is now to be applied to whatever area is embraced by the adoption. For further clarification in Section 4(a)(2) Congress added in clear and unambiguous language that these adopted laws were to apply as if the state's boundaries were extended seaward to the outer margin of the outer continental shelf. Does it not seem reasonable that the boundaries of the coastal parishes which are one and the same as those of the state would also be extended seaward? Is it not apparent if a state's boundaries are extended to any degree that for purposes of venue the area encompassed by the extension is within the state?

If the answers to either of the above two queries are in the negative, petitioner submits that the specific exclusion in the Outer Continental Shelf Lands Act of tax laws makes obvious the fact that had Congress intended that Louisiana Direct Action Statute to be excluded from the adoption, they would most assuredly have so stated the exclusion. The case of *Wabash RR Co. v. The United States*, 178 Fed. 5, 101 CCA 133, 21 Ann. Cas. 819, makes amply clear the view that where specific exclusions are set out, anything not specifically included is presumed included.

The decision rendered by the Appellate Court initiates a unique and unprecedented system for determining jurisdiction which must of necessity result in increased litigations and chaotic results from said litigation. The Court in its opinion states "if the helicopter in which appellant's husband was killed had cracked up on the drilling barge before completing takeoff it could be urged that the accident occurred within the area over which the United States had declared its jurisdiction." (Page 5 of Opinion.)

The Court goes on to say that the United States has adopted Louisiana law as to the subsoil and sea bed but not to the sea above the subsoil and the sea bed and the air above the sea. For lack of a better way to describe this new jurisdictional doctrine, it will be labeled quite appropriately "Jurisdiction by Strata." Utter chaos will result from the application of this supertechnical and short-sighted doctrine. Much of the litigation involving the outer continental shelf arises from the exploration for oil. Were it not for the need for substantive law in this area the Outer Continental Shelf Lands Act would probably never have been adopted. Let us use the exploration for oil as an example. A common tool in said exploration is a submersible drilling barge of the Texas tower type platform. These pieces of equipment are towed on location and towed off again when the job is finished. In the Court's opinion great weight is given the language "fixed structures thereon" in the Outer Continental Shelf Lands Act. Obviously the above equipment is at times fixed and at other times mobile. Suppose a roughneck before the barge is anchored on location is injured aboard the barge. Can the injured party sue his tort-

feasor's insured directly? Under the Court's test it would seem he could not. Yet if the same man were injured five minutes later when the barge was anchored on location and thus a fixed structure it seems that the Court would hold that the tort-feasor's insurer could be sued directly under Louisiana Revised Statutes 22:655. Extend the situation further and the inconsistencies get more serious. Suppose two injuries occur after a barge is on location. One man is injured on the barge, another falls off a barge and drowns. Would Louisiana law apply to one and not to the other? According to the above-quoted excerpt from the Court's opinion, it would seem so. Suppose an oil-field worker is injured while boarding a barge or platform from a crewboat. Would the Court be forced to determine by detailed and time-consuming factual testimony whether or not the boat touched the rig in order to determine whether or not to apply the Louisiana law? Suppose a man wades in the water, his feet on the sea bed, his body in the water and his head in the air, would Louisiana law apply to determine liability for his injuries? Suppose a structure is fixed, submerged in high tide and exposed in low tide, would Louisiana law apply only in low tide? It seems so according to its opinion. The result: detailed testimony as to the tides on a particular day at a particular time is necessary. The situation exposing inconsistencies in this decision in the area of oil exploration alone are far too numerous to be completely set out here, and petitioner will not further burden the Court with them. To apply this jurisdiction by strata doctrine however will immediately increase the need for detailed, time-consuming factual testimony, as well as motions, rules and discovery procedures, will inexcusably ignore the intent of Congress and will make

all too familiar to all courts situations too numerous to be set out here, all compounded by human error on critical factual issues.

Leaving factual situations, what of those perhaps affected most by the decisions, the insurance companies? This decision may cause insurance companies to change their whole approach to the Jones Act cases. Many insurance companies insure drilling contractors and oil companies only as to Jones Act claims. Thus, if the Jones Act is held inapplicable, the insurance companies will escape liability entirely. In order to escape Jones Act liability, insurance companies have traditionally claimed that the structure on which the injury occurred was not a vessel. In almost every case involving an oil rig or barge, this claim has been made. Now consider the results if the Louisiana Direct Action Statute is held not to apply to the outer continental shelf unless the structure in question is fixed. The insurance companies will now claim that the rig or barge is a vessel and as such can not be a fixed structure and come within the terms of the Outer Continental Shelf Lands Act. The plight of the unfortunate insured would be an almost impossible one, much to the delight of the ostensibly benevolent insurer. The insured in order to get the benefits of the insurance for which he has been dutifully paying premiums in the belief that he was protected, must now urge that the rig and the barge is a vessel to come within the Jones Act and that it is a fixed structure and within the terms of the Outer Continental Shelf Lands Act. Here again is a vivid example of the chaos that would be caused by the application of the short-sighted jurisdiction by strata theory. It would be a Jones Act insurer's

dream, enabling said insurer to jockey for position and undoubtedly return the proverbial monkey to the back of the insured by forcing the injured party to reduce his claim to a judgment against the insurer before the insurer could be liable. Such incongruity should not be tolerated by this Court and the adoption of Louisiana law as to subsoil and sea bed must be held to include the sea and air above said subsoil and sea bed.

The Court of Appeals has through its opinion in this case created an area in which no law applies. Time and again above, as petitioner set out factual situations wherein inconsistencies in this decision were obvious, petitioner asked the question, "Would the Louisiana law apply?" Quite obviously, since petitioner's application for rehearing was denied, the United States Court of Appeals for the Fifth Circuit would have answered each question in the negative. Petitioner thus is forced to ask, "If the Louisiana law does not apply, what law does?" The very purpose of the Outer Continental Shelf Lands Act most surely must have been to supply some law to the area from the coast line of the coastal states to the outer continental shelf. Congress wished to fill the void. The Court in this decision has refused to apply the law which Congress chose to fill the void without in any way suggesting what law might be used to supplant it. What, then, is to happen to the vast majority of structures in this area, which are both fixed and mobile, depending on many variables? Is this area to become a legal no-man's land? Petitioner is confident that it is not, but is helpless to insure that it will not be so declared by the short-sighted decision in the instant case. The Court's opinion seems to convey to petitioner that federal law should be

applied in place of Louisiana law. It was due to the lack of said federal law that Congress in the Outer Continental Shelf Lands Act adopted Louisiana law. To refuse to apply Louisiana law in the area in question forces the application of a body of federal law which does not exist. This, of course, is patently ridiculous but perhaps more patently ridiculous is the result chosen by the Court in nullifying the effectiveness of the Outer Continental Shelf Lands Act by again labeling the outer continental shelf area as a legal no-man's land.

The United States Court of Appeals for the Fifth Circuit through its decision in this case attempted to usurp the universally recognized function of the United States Supreme Court in deciding the tidelands question. Petitioner respectfully submits that the accident complained of may well have occurred within the territorial waters of Louisiana. The Court's only objection to the application of Louisiana Direct Action Statute to the area encompassed by the Outer Continental shelf Lands Act is the fact that the venue requirement in said statute is not satisfied. The Court states in its opinion that the location of the crash was "more than a marine league from the shore of LOUISIANA" (page 2 of Opinion). A critical issue in the tidelands dispute was where the coast lines of the states were to be set. The United States Supreme Court in setting out Louisiana's boundaries in *United States v. Louisiana, etc.*, 80 Sup. Ct. 961, 363 U. S. 1 (1960), stated as follows:

> "We decide only that Louisiana is entitled to its distance no greater than three geographical miles from its COAST LINE WHERE

EVER THOSE LINES MAY BE ULTIMATELY SHOWN TO BE." (Emphasis supplied.)

Whether the accident complained of is beyond one marine league from Louisiana shore is not at issue here. We submit that there is a distinct difference between the word "shore" as used by the Fifth Circuit Court of Appeals and the word "COAST" as used by the United States Supreme Court. The use of the word "shore" by the Fifth Circuit Court of Appeals indicates not only a lack of appreciation of the issue here, but also unfamiliarity with the tidelands decision. This error does not seem to petitioner to be a mere oversight; nor does petitioner believe that the Supreme Court intended that the words "SHORE" AND "COAST" be used indiscriminately and interchangeably. The United States Supreme Court took great pains to distinguish between the two words before choosing to use the word coast in the portion of the decision quoted above. In *United States v. Louisiana, etc.*, the Court denied Louisiana's claim of three marine leagues from the coast line set out in Louisiana Act 32 of 1954, but refused to deny that the coast line set out therein was valid. Thus, if that coast line is valid and Louisiana is allowed three geographical miles additional to seaward, the location of the crash comes well within the territorial waters of Louisiana. Such being the case, not even the venue requirement of Louisiana Direct Action Statute in its much inflated and overemphasized condition can prevent the statute from being applied.

It is not petitioner's contention that the location of the accident complained of can be categorically established as within the Louisiana territorial waters. It is con-

tended, however, that for the United States Court of Appeals for the Fifth Circuit to categorically state that said location is outside of said waters is fallacious in view of this Honorable Court's prior decision. To apply the Louisiana Direct Action Statute to the area three miles seaward from its coast line, where in fact no coast line has been defined, is impossible. Any statement that a location is outside of this boundary is premature until the basis for measurement is established. Such a determination by the United States Court of Appeals for the Fifth Circuit should be reviewed.

The Court of Appeals has through its decision in this case created a privileged class, namely, insurers, and has given said class an immunity under the Death on the High Seas Act, 46 USCA 761. Having established that for purposes in this suit the Louisiana Direct Action Statute is the law of the United States, the only remaining question is whether or not any insurer may be sued under the Death on the High Seas Act, *supra*, in admiralty. Let us examine the Act which provides:

> 46 USCA 761.
> "Whenever the death of a person shall be caused by wrongful act, neglect, default occurring on the high seas beyond a marine league from the shore of any state, or the District of Columbia, or the territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district court of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parents, child, or dependent relatives AGAINST THE VESSEL, PERSON, OR CORPORATION WHICH WOULD HAVE

BEEN LIABLE IF DEATH HAD NOT ENSUED." (Emphasis supplied.)

It is therefore apparent that the question of whether an insurer may be sued or not is a question of whether an insurer is one of those defendants which would have been liable if death had not ensued. If death had not ensued in this case, then the intestate could bring an action on his own behalf *under the General Maritime* Law. Under the General Maritime Law an insurer may most definitely be sued for liability on a tort or personal injury. *Loveless v. Employers Liability Assurance Corp., Ltd.*, 218 Fed. (2d) 714 (1955), while not involving an extra territorial accident, specifically shows that an insurer may be sued under the General Maritime Law. It therefore seems obvious that the deceased could have brought a marine tort action against the insurer. It is just as obvious by the terms of the Death on the High Seas Act that decedent's representative may maintain the same action. To hold otherwise is most assuredly to create a privileged class. Any such holding would again be an insurer's dream and a resultant denial of the rights of the dependents of the persons losing their lives on the high seas.

CONCLUSION.

Petitioner respectfully submits that since the landmark case of *Gibbons v. Ogden*, 22 U. S. 1, 6 L. Ed. 23, was cited in 1824 it has been uncontested that Congress may adopt the laws of the state in any subject that the Outer Continental Shelf Lands Act was a simple application of this decision, that said Outer Continental Shelf

Lands Act contains specific exclusions among which the Louisiana Direct Action Statute is not found, that as such, the Louisiana Direct Action Statute is adopted, that as a result petitioner may proceed directly against the respondent insurer, and that the judgment of the United States Court of Appeals for the Fifth Circuit and the United States District Court for the Eastern District of Louisiana be reversed and this application for writs be granted.

Respectfully submitted,

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PROOF OF SERVICE.

I, DONALD V. ORGAN, attorney for petitioner, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this day I served copies of the foregoing petition for Writ of Certiorari on Messrs. Christovich & Kearney, counsel for respondent, by mailing a copy thereof, postage prepaid, addressed to their offices at 1815 American Bank Building, New Orleans, Louisiana.

Dated this ..... day of October, 1961.

.....

DONALD V. ORGAN.

APPENDIX I.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18466

BILLIE CHARLINE GUESS, wife of and Administratrix of the Estate of BENJAMIN FRANKLIN WILEY, JR.,

Appellant,

versus

GEOFFREY STEWART READ,

Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana.

(May 18, 1961.)

Before JONES and BROWN, Circuit Judges, and CARSWELL, District Judge.

JONES, Circuit Judge: Humble Oil & Refining Company was engaged in the exploration for oil and gas at a site in the Gulf of Mexico about nine miles southeast of Grand Isle, Louisiana. At this location it had a drill-

ing barge. Benjamin Franklin Wiley, Jr. was an employee of Humble. He lost his life as the result of the crash of a helicopter in the Gulf soon after it left the drilling barge. The location of the barge and the situs of the crash of the helicopter are more than a marine league from the shore of Louisiana but within the area subject to the operation of the Outer Continental Shelf Lands Act.[1] The widow of Wiley, in her own right, and as administratrix of his estate, brought suit by libel under the Death on the High Seas Act[2] against several defendants, alleging unseaworthiness and unairworthiness of the aircraft and negligence in its operation. Among the defendants was United Aircraft Corporation which had manufactured the helicopter.

United Aircraft Corporation was dismissed from the suit on the ground that no valid service of process had been made upon it. The plaintiff, who is the appellant here, then attempted to join as a party defendant the negligence liability insurance carriers[3] of United Aircraft under the Louisiana Direct Action Statute.[4] The appellee, for the insurers, moved to dismiss the action as to them and him on the grounds that (1) the accident occurred outside of Louisiana and the Direct Action Statute applies only if the accident or injury occurred within the State of Louisiana, (2) the Direct Action Statute does not apply to suits in Admiralty, and (3) the Direct Action Statute does not apply to suits brought under the Death on the High Seas Act. The district court granted

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[1] 43 U.S.C.A. § 1331 et seq.

[2] 46 U.S.C.A. § 761 et seq.

[3] Underwriters at Lloyds, represented in this litigation by Geoffrey Stewart Read pursuant to a stipulation.

[4] L.S.A.-R.S. 22:655.

the motion. From its order of dismissal this appeal was taken.

Prior to the enactment of the Direct Action Statute, a claimant could not maintain a direct action against an insurer of an alleged tortfeasor, but, as under the law of most jurisdictions,[5] had first to sue the insured, obtain judgment, and exhaust his remedies prior to bringing his action against the insurer. Burke v. Massachusetts Bonding & Insurance Co., La. App. 19 So. 2d 647, aff. 209 La. 495, 24 So. 2d 875. Cf. Lumbermen's Mutual Casualty Co. v. Elbert, 348 U. S. 48, 75 S. Ct. 151, 99 L. Ed. 59.

The right to maintain a direct action against the insurer of an alleged tortfeasor under the Louisiana statute exists only where the cause or right of action arose in the State of Louisiana. Hancock v. State Farm Mutual Automobile Insurance Co., 5th Cir. 1959, 267 F. 2d 2; Weingartner v. Fidelity Mutual Insurance Co., 5th Cir., 1953, 205 F. 2d 833; Hidalgo v. Fidelity & Casualty Co., 5th Cir. 1953, 205 F. 2d 834. Cf. McManus v. Delta Fire & Casualty Co., 5th Cir. 1958, 251 F. 2d 496. The accident which resulted in the fatal injury did not occur within the boundaries of the State of Louisiana. Unless the federal statute allows the direct action to be brought, we must agree that no claim is asserted upon which relief can be granted. The Outer Continental Shelf Lands Act provides that,

> "To the extent that they are applicable and not inconsistent with this Act or with other federal laws and regulations of the Secretary now in effect or hereafter adopted, civil and criminal

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[5] 46 C.J.S. 107, Insurance § 1191.

> laws of each adjacent state as of the effective date of this Act, are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf." 46 U.S.C.A. § 1333(2).

The Louisiana statute contains venue requirements that an action be brought in the parish where the accident or injury occurred or in the parish where the insured or insurer is domiciled. Thus is shown, we think, an intent on the part of the Louisiana Legislature that the accident or injury upon which a direct action may be maintained be one occurring within a parish of the State. The existence of federal jurisdiction over suits under the Louisiana statute[6] does not change the effect to be given to the venue provisions of the Act in determining the legislative intent. We need not determine whether Louisiana could have authorized a claimant to bring a direct action against the tortfeasor's insurer where the accident or in-

[6] Lumbermen's Mutual Casualty Co. v. Elbert, supra.

jury occurred outside of the State. It did not do so, and not having done so, we think the appellant here cannot maintain a direct action.

The Continental Shelf Act was enacted for the purpose, primarily, of asserting ownership of and jurisdiction over the minerals in and under the Continental Shelf. Jurisdiction was asserted over "the subsoil and seabed" of the outer Continental Shelf. 43 U.S.C.A. § 1332(a). It is only for "that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon" that the State law applies. 43 U.S.C.A. § 1333(a)(2). This does not include the sea above the subsoil and seabed and does not include the air above the sea. That this is the intent is further shown by the provision that the Act "shall be construed in such a manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected." If the helicopter in which the appellant's husband was killed had cracked up on the drilling barge before completing its take-off, it could be urged that the accident occurred within the area over which the United States had declared its jurisdiction. Such a case is not before us and is not decided by us. In the case before us the plane had left the barge and was over the high seas, and hence there is no adoption by the federal act of the Louisiana law applicable to the situation here present.

What we have said disposes of the appellant's contention that there is a cause of action under the Death on

the High Seas Act[7] which may be asserted, by invoking the Louisiana Direct Action Statute, against the insurer of an alleged wrongdoer. Cited to support the appellant's contention is Lovless v. Employers' Liability Assurance Corporation, 5th Cir. 1955, 218 F. 2d 714. In the cited case the injury which gave rise to the cause of action arose, not upon the high seas, but in the Port of New Orleans and, of course, in the State of Louisiana. Other contentions need not be noticed.

The judgment of the district court is

AFFIRMED.

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[7] "Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district court of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued." 46 U.S.C.A. § 761.

APPENDIX II.

46 U. S. C. A. 761:

"Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district court of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative **against the vessel, person, or corporation which would have been liable if death had not ensued.**" (Page 538.) (Emphasis supplied.)

APPENDIX III.

Sec. 655. LIABILITY POLICY; INSOLVENCY OR BANKRUPTCY OF INSURED; DIRECT ACTION AGAINST INSURER.

No policy or contract of liability insurance shall be issued or delivered in this state, unless it contains provisions to the effect that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injuries sustained or loss occasioned during the existence of the policy, and any judgment which may be rendered against the insured for which the insurer is liable which shall have become executory, shall be deemed prima facie evidence of the insolvency of the insured, and an action against the insurer may thereafter be maintained within the terms and limits of the policy by the injured person, or his or her survivors or heirs mentioned in Revised Civil Code Article 2315. The injured person or his or her survivors or heirs hereinabove referred to at their option, shall have a right of direct action against the insurer within the terms and limits of the policy in the parish where the accident or injury occurred or in the parish where the insured or insurer is domiciled, and said action may be brought against the insurer alone or against both the insured and insurer jointly and insolido, at the domicile of either or their principal place of business in Louisiana. This right of direct action shall exist whether the policy of insurance sued upon was written or delivered in the state of Louisiana or not and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the State of Louisiana.

Nothing contained in this Section shall be construed to affect the provisions of the policy or contract if the same are not in violation of the laws of this state. It is the intent of this Section that any action brought hereunder shall be subject to all of the lawful conditions of the policy or contract and the defenses which could be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of such policy or contracts are not in violation of the laws of this state.

It is also the intent of this Section that all liability policies within their terms and limits are executed for the benefit of all injured persons, his or her survivors or heirs, to whom the insured is liable; and that it is the purpose of all liability policies to give protection and coverage to all insured, whether they are named insured or additional insured under the omnibus clause, for any legal liability said insured may have as or for a tort feasor within the terms and limits of said policy. Amended and reenacted Acts 1958, No. 125.